IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1386 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SONI DHANJIBHAI HARIBHAI

Versus

DARJI KESHAVLAL JAGJIVANBHAI

Appearance:

1. Civil Revision Application No. 1386 of 2001

MR VIMAL M PATEL for Petitioner No. 1

MR PM VYAS for Respondent No. 1

MS REKHA H KAPADIA for Respondent No. 1

MR HIREN P VYAS for Respondent No. 1

MS MONA B RAVAL for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/11/2002

ORAL JUDGEMENT

#. The petitioner is the original defendant of Regular Civil Suit No.90 of 1994 pending in the Court of the Civil Judge (Junior Division), Jasdan. Respondents herein are the plaintiffs of the said suit. The said suit is filed for getting decree for possession of the rented premises. One of the grounds in the said suit is nonpayment of rent. During pendency of the said suit, present petitioner submitted an application Exh.103 requesting the trial Court to exhibit the document, which is a notice issued by the advocate of the plaintiffs dated 18.7.1994, which is at Mark 66/10. On behalf of the present petitioner, it was requested that the said notice document may be exhibited, and, for that purpose, the then advocate of the plaintiff one Mr.Dhadhal, who has, subsequently, been appointed as Civil Judge, may be allowed to be examined and, for that purpose, issuance of witness summons was requested. By proving the aforesaid document Mark 66/10, the petitioner wanted to prove before the trial Court that, he has raised the dispute of standard rent within month from the date of receipt of the notice. The petitioner also gave an application for exhibiting the receipts of amount, which is deposited before the Nazir of the Court, i.e. receipts at Mark 66/5 to 66/8. The trial Court has rejected the said prayer. Therefore, this revision application is filed.

#. After going through the submissions of both the sides, it is clear that, on behalf of the present petitioner, reply to the demand notice is already sent and that document is already exhibited at Mark 56. As per the said reply of notice, the petitioner has clearly stated that in response to the notice dated 1.7.1994, this reply to the notice is given. The aforesaid reply to the notice of the plaintiffs is dated 13.7.1994. However, there is some dispute between the parties, whether really to the said notice was given on 13.7.1994 or on 3.8.1994. But one thing is certain that the petitioner has already given a reply to the so called first notice of demand dated 1.7.1994. Ultimately, it is for the trial Court to appreciate the evidence for coming to the conclusion that, whether the dispute of standard rent is in existence at the time when the suit was instituted and, whether the case would fall under Section 12(3)(a) or Section 12(3)(b) of the Bombay Rent Act. All these points are required to be considered at the time of conducting the trial. The trial Judge has not exhibited the aforesaid second notice purported to have been sent by the plaintiffs, which according to Mr.Patel, is dated 18.7.1994. However, the order of the trial Court is not

required to be interfered with by this Court, especially when the reply of notice of the plaintiffs is on the basis of the notice dated 1.7.1994, which is clear as per Mark 56 on record, and, there is no other notice, which is replied by the petitioner.

#. So far as another documents, i.e. receipts given by the Nazir of the trial Court, are concerned, the same are documents of Court record and the learned trial Judge has not dealt with the same by exhibiting such documents, in any manner. In my view, so far as the payment receipts at Mark 66/5 to 66/8 are concerned, there cannot be any objection for exhibiting the same, as, the same are part of court proceedings. The learned trial Judge is directed to exhibit the aforesaid receipts. It is clarified that, suit is required to be decided on appreciation of the documents on record and considering the arguments of both the sides.

#. Subject to the modification of the impugned order, as indicated above, the order exhibiting the document Mark 66/10 is not required to be interfered by this Court in this revision on the grounds stated hereinabove. Hence, this revision application is disposed of on the aforesaid line. Rule is partly made absolute qua not exhibiting the documents Mark 66/5 to 66/8 only. There shall be no order as to costs. Ad-interim relief granted earlier stands vacated.

(P.B.Majmudar,J)
(pathan)